

UDC Amendments
Frequently Asked Questions
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1. **Question:** What is the **UDC**?

Answer: The UDC, or Unified Development Code, acts as the zoning code and subdivision regulations for the City of Memphis and unincorporated Shelby County. In other words, its regulations pertain to all private and City- and County-owned properties, as well as all new subdivisions that are laid out in Shelby County outside of the six suburban municipalities.

2. **Question:** What are **overlay districts**?

Answer: There are currently three overlay districts (Medical District, University District and Midtown; these are included as separate chapters of the UDC within Article 8) and two special purpose districts that essentially operate as overlay districts (South Central Business Improvement District and Uptown; these are included in Article 7 of the UDC). The five districts contain special regulations, usually in addition to the other regulations found in the UDC, and development within these districts require additional staff review, as compared to development within the conventional zoning districts. Many of these overlay districts were created in advance of the UDC to address a particular development and were originally designed to be temporary in nature while the UDC was being developed.

3. **Question:** What **changes** are proposed to the **overlay districts**?

Answer: The overlay districts are not being significantly changed. The only amendment of note in any of the overlay districts involves the deletion of a few repetitive provisions in the Midtown Overlay District. These provisions, which are exact duplicates of the same provisions found in other sections of the UDC (such as parking and landscaping standards) were originally included in the Midtown Overlay District because it took effect a few months prior to the UDC taking effect.

4. **Question:** What are **administrative deviations**, and why are there new ones proposed?

Answer: Administrative deviations are waivers from the UDC that can be approved by the Planning Director. They are similar to variances, which must be approved by the Board of Adjustment, except they are more minor in nature. Unlike the variance process, no notice is provided to neighboring property owners, the threshold being that administrative deviations are so minor in nature they do not affect neighboring property owners. Currently, there are 36 administrative deviations in the UDC, ranging from allowances to permit 5% fewer windows along a façade of a building to decreasing parking lot setback from the street by 5%. The proposed amendments would add 12 more, or a 33% increase. These range from the allowance to *average* a building's proximity from the street to determine its setback, such as the case with the new American Cancer Society Building next to Sun Studios, to waiving certain dimensional requirements of bicycle parking. Other items, such as allowing a 10% reduction in required minimum building setback and allowing a 0-foot building setback for existing buildings that immediately abut the sidewalk were contained in the old Zoning Code but inadvertently omitted from the UDC.

5. **Question:** Will the proposed amendments exacerbate **suburban sprawl**?

Answer: No. While the UDC currently contains tools that enable new development in the suburban areas of unincorporated Shelby County to be more innovatively designed, it does not contain any language that would curtail such new development. In fact, some of the existing stringent standards of the UDC that apply to property within the core of the city may actually exacerbate suburban sprawl since they place such properties at a further competitive disadvantage with properties in the suburbs. Many of these stringent standards are proposed to be subject to the administrative deviation process (see above) rather than forcing them through the costly and time-consuming variance process with the Board of Adjustment.

6. **Question:** What are **Planned Developments**?

Answer: Planned Developments (PDs) are a type of development that may be submitted for approval by the Memphis City Council and/or Shelby County Board of Commissioners that may require one or more “waivers” from the provisions UDC. PDs can both change the zoning of a property, as well as create legal lots of record. In that way, they merge the provisions of a zoning code with that of subdivision regulations. The PD process essentially is a two-phase process: an outline plan is submitted first, followed by a final plan. Outline plans require approval of the Land Use Control Board, the Memphis City Council and/or the Shelby County Board of Commissioners. They essentially grant any waivers from the UDC, including use restrictions. In this way, the outline plan essentially serves as a rezoning. The final plan, which can be submitted up to five years after the outline plan, must adhere to the outline plan. It is not filed by the developer until he or she is ready to develop a site or construct roads within the PD. In this way, final plans essentially serve as subdivision plats. Planned Developments have been cited by some as an easier process than traditional rezoning, and therefore, it has been abused in the past, contributing to suburban sprawl.

7. **Question:** Wouldn't lifting the **expiration dates** from approved Planned Developments increase suburban sprawl since those Planned Developments would not require a re-evaluation by City Council and/or County Commission?

Answer: Possibly, which is why this amendment was dropped prior to being approved by the Land Use Control Board. Under the current proposal, the standard language that states that Planned Developments shall expire in five years if no final plan is filed with the Office of Planning and Development will be codified. In other words, what has been a long-standing policy on expiration will now become ordinance.

8. **Question:** Wouldn't the allowance that approved Planned Developments and Special Use Permits (SUPs) be given **time extensions** after their expiration increase sprawl?

Answer: Post-expiration time extensions have been dropped from the proposed set of amendments. All PDs, SUPs, as well as subdivisions, that have expired will require a new application and a new showing of the required findings of fact under the UDC.

9. **Question:** What are Planned Development **concept plans**? Will concept plans be required with a submittal of a Planned Development?

Answer: Concept plans are essentially conceptual site plans that show the layout of the buildings, roadways, etc. in a proposed Planned Development. They are submitted with a Planned Development outline plan (the first phase of a PD), but this requirement is found in the application form for a Planned Development and not the Code. As such, language is now proposed that will codify this process so it cannot be removed through a simple re-draft of the application form by staff.

10. **Question:** Why is the authority to grant **use variances** being returned to the Board of Adjustment?

Answer: The use variance authority of the Board of Adjustment may only be curtailed by action of the Tennessee General Assembly. As such, the Board *currently* has the power to grant use variances. However, new language is proposed that will both limit the applicability of the use variance as well as set a higher threshold for their approval. First, no use variance may be requested for any use that would otherwise require the issuance of a Special Use Permit by the Memphis City Council and/or the Shelby County Board of Commissioners. Second, the Board would not have the authority to grant use variances for billboards. Third, the Board would not have the authority to grant use variances for any property where a rezoning had been requested in the past 18 months. This prevents “forum shopping” for a change in zoning. Finally, language has been added that requires that the Board make a finding of fact that none of the uses that are actually permitted on the subject property are practicable. This is in keeping with the spirit of the enabling legislation passed by the General Assembly, but it will also prevent the Board from becoming the end-run around the appropriate rezoning and Special Use Permit processes that it arguably had become in the past.

11. Question: What is a **Use Chart**?

Answer: The Use Chart is perhaps the most important section in the entire UDC. Included in Chapter 2.5 of the Code, the Use Chart indicates which uses are permissible in each and every zoning district throughout the City and unincorporated County.

12. Question: Why is the **Use Chart** being changed?

Answer: The UDC made substantial changes to the Use Chart, requiring some uses to obtain Special Use Permits that had previously been “by right” uses and eliminating some uses altogether from their zoning districts. This has resulted in thousands of businesses that find themselves unable to expand, rebuild, sell if they have been vacant for more than twelve months or, in some instances, obtain refinancing. During its original approval process in 2010, members of the Memphis City Council and Shelby County Board of Commissioners specifically instructed OPD staff to not create nonconforming uses, but the use chart was nevertheless inadvertently changed creating nonconforming uses, creating some degree of turmoil among property and business owners throughout the City, many of whom must now file zoning requests for simple expansions of their businesses. One factor in the change from the old Use Chart to the UDC Use Chart was the fact that the categories and zoning district designations changed.

For example, under the old Zoning Code, the Heavy Industrial zoning district permitted a variety of uses that are no longer permitted in that zoning district. These include gas stations, a variety of retail uses and office buildings. For instance, an empty office building on New Getwell, north of Raines, was recently purchased by a new business looking for its first office space. However, the empty office building they purchased, which is surrounded by other empty office buildings, had been vacant for more than twelve months, meaning it could not be reoccupied without the successful completion of a four-to six-month zoning process. These errors in the Use Chart have exacerbated the need for new Planned Developments, as that is one of the few ways in which a property owner may request a use that is no longer permitted on his or her property. The proposed amendments to the use chart will relieve such business owners from filing such a rezoning or Planned Development.

In addition to prohibiting some uses that were once permitted, the Use Chart in the UDC also does the opposite by allowing some uses in zoning districts in which they had previously been prohibited. One example is diesel fuel terminals for trucks. These gas stations that cater to semi trucks were outlawed from any zoning district except for the industrial zoning districts in 2001 when the Memphis City Council and Shelby County Board of Commissioners passed a special zoning ordinance amendment. However, this amendment was inadvertently deleted when the UDC was adopted, resulting in a potential new diesel fuel terminal in Whitehaven, which was incidentally the source of the 2001 zoning amendment.

13. Question: Why are some of the **building metrics** for particular uses being changed?

Answer: Some “building metrics” make it particularly difficult for redevelopment to occur. For example, the UDC contains a use standard that sets the maximum building square footage in the CMU-1 commercial district at 15,000 square feet. While this is a practical approach to reduce the proliferation of “big box” stores in the CMU-1 district, which is usually in close proximity to residential areas and is designed to cater to smaller, neighborhood-oriented retailers, this metric does not respect the areas that are currently zoned CMU-1. For example, Poplar Plaza is zoned CMU-1. When its Kroger store wanted to expand, it ran into difficulty with the standard that states that no building may be larger than 15,000 square feet. As such, the proposed UDC amendments will stipulate that existing shopping centers are exempt from this maximum square footage requirement.

Another example of a metric that is prohibitive to redevelopment is the requirement that all lots in the CMU-3 commercial district be 100 feet in width. The old Cecil Printing building on Poplar at Colonial, next to Burger King, is located within the CMU-3 district and only 53 feet in width. As such, this lot is considered a non-conforming lot that cannot be built upon without some sort of variance issued by the Board of Adjustment. This intent of this regulation appears to limit the number of curbs cuts along major arterials; however, its affect is to limit the purchase and redevelopment of these small lots that are

typically in urbanized sections of the City. The proposed amendment will reduce the minimum lot width in the CMU-3 district to 50 feet.

The UDC also contains a standard 2-foot building setback for urbanized areas of the City. This enables additional sidewalk width for buildings that are in close proximity to the street. However, the 2-foot minimum has resulted in converting thousands of buildings that were built along the right-of-way (with a 0-foot setback) into non-conforming structures. As such, these may not be rebuilt if destroyed by an act of God. In addition, banks are somewhat reticent to refinance such structures. A recent example occurred with the refinancing of Barboro Flats, the new apartment building at Main and Gayoso built where the old Cook and Love shoe store once stood. It is built directly on the property line, so with the new 2-foot required building setback, it is now considered a non-conforming structure. Language is proposed to the UDC that would exempt all existing buildings from the 2-foot building minimum setback to address this problem.

Finally, new regulations in the UDC require all apartment buildings to be in close proximity to the street (no further than 20 feet behind the sidewalk) and fill a certain percentage of their lot, which would reduce the amount of side yard parking and essentially eliminate front yard parking. This requirement, which is designed to promote an urban streetscape, has also resulted in converting most of the City's apartment communities into nonconforming structures. As such, one of the proposed amendments to the UDC would exempt all existing apartments from these requirements and reduce the applicability of it to new apartments that are in the urbanized areas of the City (ie, downtown, inside the Parkways and in the University District).

14. Question: What are **home occupations**? How will the amendments affect them?

Answer: Home occupations, or home-based businesses, were introduced to Memphis and Shelby County with the adoption of the UDC. Under the old Zoning Code, they were prohibited. There are a number of regulations attached to home-based businesses designed to maintain the residential character and stability of not only the residence itself, but also to the surrounding neighborhood. Currently, the UDC prohibits any customers from visiting the home-based business, except for limited one-on-one instructions, such as piano lessons. The proposed amendments would allow one customer at a time, but also permit up to four customers at a time for group instruction, such as swimming instructions. Any group instruction of between five and ten students would require the issuance of a Conditional Use Permit by the Board of Adjustment. This process would enable staff and the Board to look at the size of the lot, the nature of the street on which the site abuts and the proximity of neighboring property owners to the proposed use.

15. Question: Why wasn't the **public notified** of the changes to the UDC earlier?

Answer: When approved by the Memphis City Council and Shelby County Board of Commissioners in August, 2010, the legislative bodies instructed the Office of Planning and Development to create a list of amendments based on its administration of the Code in one year and present those amendments. Once the first draft of this list of amendments was completed in January of 2012, they were posted on a blog accessible through both the homepage of the Shelby County website, as well as through the Office of Planning and Development's, Land Use Control Board's and Board of Adjustment's websites. Both the *Commercial Appeal* and the *Memphis Business Journal* ran articles (published on January 17 and January 19, respectively) on the amendments with links to the blog. Newspaper notice was published in anticipation of the February 9 Land Use Control Board meeting, which was a public hearing on the amendments. The Board voted to delay the amendments until March 8, at which staff requested a further 30-day delay to allow time to meet with the UDC stakeholders. On April 12, the Land Use Control Board again held a public hearing on the amendments and voted unanimously to approve them and forward them to the Memphis City Council and Shelby County Board of Commissioners. Since approval by the Land Use Control Board, several news articles and other blog posts have been published that have encouraged further dialogue on the amendments to the UDC. Furthermore, in their June 18 article notifying the public of the community meeting on the UDC set for June 27, the *Daily News* reprinted a link to the UDC blog. The Memphis City Council is scheduled to hold its own public hearing on this matter on July 17, with the Shelby County Board of Commissioners scheduled to hold their public hearing on July 30.